IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

WA.No. 624 of 2006()

AGAINST THE JUDGEMENT/ORDER IN OP.11005/1995 Dated 15/10/2005
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APPELLANTS:RESPONDENTS IN THE O.P.
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1. STATE OF KERALA, REP. BY THE CHIEF SECRETARY TO GOVERNMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE CHIEF TOWN PLANNER, PALAYAM, THIRUVANANTHAPURAM.

3. S. SEVINI, CHIEF TOWN PLANNER PALAYAM, THIRUVANANTHAPURAM.

4. JACOB ZACHARIA, RTD.CHIEF TOWN PLANNER ARAKKAL HOUSE, KURICHY, KOTTAYAM.

BY GOVERNMENT PLEADER SRI.SANDESH RAJA

RESPONDENT: PETITIONER IN THE O.P.

MATHEW PHILIP, T.C.15/195, UDARASIROMANI COMPOUND, THIRUVANANTHAPURAM-695 010

BY SRI.S.RAMESH

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 14/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S.RADHAKRISHNAN & ANTONY DOMINIC, JJ.
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W.A.NO. 624 OF 2006
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Dated this the 14th day of June, 2007

J U D G M E N T

Radhakrishnan, J.

The writ petition was preferred by the respondent herein seeking a writ of certiorari to quash Exts.P10, P11 and P14 orders and also for a writ of mandamus directing the first respondent to give promotion to the petitioner as Chief Town Planner w.e.f. 30.1.1983 and to give him arrears of salary as Chief Town Planner from 23.8.1993 to 30.6.95 and also for other consequential reliefs.

2. Petitioner was initially appointed as Assistant Town Planner on 23.8.1962 and was later promoted as Junior Town Planner on 27.8.1962 as as Town Planner on 3.7.1995. He was granted leave without allowance initially for a period of two years as per Government order dated 13.7.1976. The same was extended by three years by order dated 30.6.1978 and further by a period of five years as per Government order dated 10.8.1981. Later after expiry of the five years leave, he did not join duty and

he was on unauthorised absence from 16.4.92. Later he was served with Ext.P6 memo of charges dated 17.10.92 to show cause why disciplinary action as contemplated under the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 should not be taken against him for his unauthorised absence. Petitioner filed a reply to show cause notice. Then enquiry was conducted and ultimately memo dated 30.4.94 was issued by the Government to him to show cause why the punishment of removal from service should not be inflicted upon him. Petitioner submitted Ext.9 reply. After perusing the reply, finally the disciplinary authority issued Ext.P10 dated 17/6/95 imposing compulsory retirement on the petitioner from 16.4.92 . While passing Ext.P10 order, Government referred to Rule 60 A Part 1 of Kerala Service Rules. Later petitioner attained the date of superannuation. Noticing that a mistake has been crept in the quoting of the provision in Ext.P10, the Government passed Ext.P15 order dated 18.11.95 stating that the petitioner was awarded the punishment of compulsory retirement w.e.f.16.4.1992 under Rule II(vi), Kerala Civil Service (Classification, Control and Appeal) Rules, 1960 in modification of Ext.P10.

3. Petitioner aggrieved by the above orders have filed OP No.11005/95. Learned Single Judge referred to Ext.P15 and took the view that the punishment was imposed only on 18/11/1995 after the date of superannuation and hence illegal and therefore cannot be enforced. On that basis learned Single Judge declared that the petitioner shall be deemed to be in service as Senior Town Planner w.e.f. 23.8.1993 and the consequential benefits which are granted to the juniors to the petitioner shall be granted to him. Government was directed to pass appropriate orders with regard to the period the petitioner did not join duty after 16.4.1992 till 23.8.1993.

4. Punishment of compulsory retirement in our view has been imposed by the Government on 17/6/95 by Ext.P10 order. The mere fact that a provision was wrongly quoted in Ext.P10, would not take away its legal efficacy. Admittedly Government have the power to impose punishment of compulsory retirement. Noticing that a provision was misquoted in Ext.P10, the Government passed Ext.P15 order dated 18.11.95 quoting the correct provision. Act of wrong quoting of a provision, cannot be taken advantage by the respondent, especially when the power of the Government to impose the punishment is undisputed.

Learned Single Judge in our view was not justified in holding the punishment of compulsory retirement imposed on the petitioner after the date of superannuation. Judgment of the learned Single Judge is accordingly vacated. We make it clear that the order of compulsory retirement would come into effect on 17.6.95. It is so declared.

5. Further we notice that petitioner had made a request for joining duty on 23.8.1993 and he was not allowed to join duty and no order of suspension was issued. In such circumstances, we are of the view that petitioner is entitled to subsistence allowance from 23/8/93 to 17/6/95. It is so ordered. Government will pass consequential orders in view of the judgment. The judgment of the learned Single Judge is modified accordingly.

Writ appeal is disposed of as above.

K.S.RADHAKRISHNAN, JUDGE.

ANTONY DOMINIC, JUDGE.

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